



United States Government

NATIONAL LABOR RELATIONS BOARD

Region 30

310 West Wisconsin Avenue - Suite 700

Milwaukee, WI 53203-2211

Telephone (414)297-4046

FAX (414) 297-3880

www.nlrb.gov

May 26, 2004

Ms. Patricia M. Jefferson
233 Greenbay Road
Kenosha, WI 53144

**Re: HCR Manor Care - Washington Manor
Case 30-RD-1407**

Dear Ms. Jefferson:

The Region has carefully investigation and considered your petition in the above-captioned case, petitioning for an investigation and determination of representatives under Section 9(c) of the National Labor Relations Act.

Decision to Dismiss: Based on that investigation, I have concluded that further proceedings are not warranted, and I am dismissing your petition for the following reasons:

In support of your petition you allege that on Friday, May 7, 2004 you faxed a three-page document consisting of a cover page and two additional pages containing dated signatures to the Regional Office. You further allege that a Board Agent left a message for you Monday morning, May 10, and that you attempted to contact the Board Agent on that and the following day. On May 11, when you spoke to the Board Agent you were informed your filing was deficient. Later upon providing the expiration date of the contract you were told that the period for the filing of a timely petition had passed. You filed the instant petition on the following Monday, May 17, 2004.

Under well-established Board law addressing the so-called "contract bar" (barring the filing of a decertification petition during the term of a valid contract of three years or less), a timely decertification petition must be filed more than 60 days, but less than 90 days, before the expiration date of an existing contract. *Leonard Wholesale Meats*, 136 NLRB 1000 (1962). In the health care industry a petition must be filed more than 90 days, but less than 120 days, before expiration. *Trinity Lutheran Hospital*, 218 NLRB 199 (1975). In both instances this period is known as the "window period," and the Board has encouraged the strict application of this timeliness rule as a way of furthering the general policies of the contract bar rule. *Excel Corporation*, 313 NLRB 588 (1993)(reversing its earlier decision, *Excel Corporation*, 311 NLRB 710 (1993), in which a "reasonable, additional period of time" was allowed for the Petitioner to submit a valid showing of interest).

Section 102.61 of the Board's Rules and Regulations sets forth the 10 required elements of a petition for decertification. These include information necessary to properly serve the petition on the parties, but also a number of other essential facts that allow the Regional Office to

determine the appropriateness of the petition. NLRB Form-502 incorporates these elements into a single form, and while commonly used by parties filing for a decertification election its use is not required.

In the present case the issue is whether a valid petition was filed within the window period. You argue that the initial filing, the showing of interest and its cover page, constitutes a sufficient petition because the cover page contained information regarding the parties. You also argue, in the alternative, that if the petition is considered untimely it is the fault of the Regional Office and not yourself. The Employer repeats these arguments in its position statement and adds two additional points. First, that even if the petition is dismissed it is inappropriate to do so without a hearing, and second that the Board should reconsider its strict interpretation of the window period rule.

Regarding your first argument, that the cover page constitutes a sufficient petition, I disagree. While the cover page contained some of the information required under Section 102.61, such as your name and the names of Employer and Union, it lacked critical information necessary for the Regional Office to determine the appropriateness of the petition, such as a bargaining unit description, the expiration date of the contract, and the number of employees employed by the Employer.

I also reject your second argument, that the petition was timely if not for Regional Office error. It is true that the Board has allowed exceptions to the window period rule where the Regional Office provided incorrect information, an error that ultimately caused a petition to be untimely. See *Vanity Fair Mills*, 256 NLRB 1104 (1981)(Where a Regional Office repeatedly provided incorrect information regarding the window period prior to filing of petition). This is not the same situation. In *Vanity Fair* the Regional Office provided incorrect information prior to the filing of a petition. In the present case there is no allegation that the Regional Office provided any incorrect information, merely that by the time you spoke to a Board Agent to determine the window period, the window period had closed. The Regional Office did not cause the timeliness problem in the present case; it was instead caused by your insufficient initial filing arriving in the Regional Office the day before the window period closed. The end result of this timing was that, unfortunately, you were not able to perfect your filing before the window period closed, but this is not a basis for deviating from the Board's strict interpretation.

The Employer's first argument, that a hearing is required prior to dismissal, is also non-persuasive. Section 11011 of the Casehandling Manual, "Administrative Dismissal: No Question Concerning Representation" clearly directs "if the petition is not timely filed...absent withdrawal the petition should be dismissed." The case cited by the Employer in support of its contention presents a very different factual basis, one in which a Regional Director found a question concerning representation and directed an election absent a hearing. *Angelica Healthcare Services Group, Inc.*, 315 NLRB 1320 (1997). This case is simply not applicable to the instant petition and I find it unpersuasive. Regarding the Employer's second point, encouraging the Board reconsider its strict interpretation of the window period I am bound by existing Board law and apply it in this matter. For the above reasons, I am dismissing the instant petition.

Your Right to Seek Review. The National Labor Relations Board's Rules and Regulations permits any party to obtain a review of this action by filing a request (eight copies) with the Executive Secretary. If you wish to seek review of this action, your attention is directed to the following.

Review Request Due Date: The request for review must be received by the Executive Secretary in Washington, D.C. by the close of business at **5:00 p.m. (ET) on June 9, 2004.** However, if you mail the request for review, it will be considered timely if it is postmarked no later than one day before the due date.

Extension of Time to File Request for Review: Upon good cause shown, the Board may grant special permission for a longer period within which to file. A request for an extension of time should be submitted to the Executive Secretary. A copy of any such request for extension of time should be submitted to me and to each of the other parties to this proceeding and the copy must be served in the same or faster manner as that utilized in filing the request with the Board.

Request for Review Contents: Any request for review (eight copies) must contain a complete statement setting forth the facts and reasons upon which it is based. You should send a copy of the request for review to me. The request for review must be served in the same or faster manner as that utilized in filing the request with the Board.

Address for Request for Review: The request for review should be sent to the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, DC 20570.

Very truly yours,

/s/ Benjamin Mandelman

Benjamin Mandelman
Acting Regional Director

cc: See Next Page

cc:

Ms. Patricia M. Jefferson,
233 Greenbay Road
Kenosha, WI 53144

HCR Manor Care - Washington Manor
Ms. Patricia Jefferson,
3100 Washington Road
Kenosha, WI 53144

International Union, UAW
Mr. Phillip L. Gilliam, AGC
8000 East Jefferson Avenue
Detroit, MI 48214

Hotel & Restaurant Employees Int'l Union
Mr. Morty F. Miller, Asst. Genrl Pres.
1219 28th Street, N.W.
Washington, DC 20007

Les Heltzer, Executive Secretary
National Labor Relations Board
1099 14th Street, N.W.
Washington, DC 20570

Wimberly, Lawson, Steckel, Nelson &
Schneider, P.C.

Mr. Clifford H. Nelson, Jr., Esq.
Suite 400, Lenox Towers
3400 Peachtree Road, N.E.
Atlanta, GA 30326-1107

Hotel Employees Restaurant Employees Union
Local 122

Mr. Salvador Gallo, Business Manager
744 North 4th Street, Suite #230
Milwaukee, WI 53203

Previant, Goldberg, Uelmen, Gratz, Miller &
Brueggeman, S.C.

Ms. Naomi E. Soldon, Esq.
1555 North RiverCenter Drive
P.O. Box 12993
Milwaukee, WI 53212

VIA E-MAIL